



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB0178

Introduced 1/18/2011, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102
775 ILCS 5/7B-102

from Ch. 68, par. 7A-102
from Ch. 68, par. 7B-102

Amends the Illinois Human Rights Act. In cases other than real estate transaction cases: provides that the Department of Human Rights shall serve on (instead of send by certified or registered mail to) the parties written notice of the complainant's right to sue in court or file with the Human Rights Commission; provides that the time within which to file a party's position statement and a respondent's response to the charge is 30 (instead of 60) days; and provides that the Department may issue a default within 30 (instead of 60) days. In cases other than real estate transaction cases, provides that upon reasonable notice to the complainant and the respondent, the Department shall conduct a fact finding conference, unless prior to 365 days after the date on which the charge was filed the Director has determined whether there is substantial evidence that the alleged civil rights violation has been committed, the charge has been dismissed for lack of jurisdiction, or the parties voluntarily and in writing agree to waive the fact finding conference (instead of providing that upon reasonable notice to the complainant and the respondent, the Department shall conduct a fact finding conference prior to 365 days after the date on which the charge was filed, unless the Director has determined whether there is substantial evidence that the alleged civil rights violation has been committed or the charge has been dismissed for lack of jurisdiction). In real estate transaction cases, provides that the parties may voluntarily waive the fact finding conference requirement.

LRB097 02687 AJO 42706 b

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Sections 7A-102 and 7B-102 as follows:

6 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)
7 Sec. 7A-102. Procedures.

8 (A) Charge.

9 (1) Within 180 days after the date that a civil rights
10 violation allegedly has been committed, a charge in writing
11 under oath or affirmation may be filed with the Department
12 by an aggrieved party or issued by the Department itself
13 under the signature of the Director.

14 (2) The charge shall be in such detail as to
15 substantially apprise any party properly concerned as to
16 the time, place, and facts surrounding the alleged civil
17 rights violation.

18 (A-1) Equal Employment Opportunity Commission Charges. A
19 charge filed with the Equal Employment Opportunity Commission
20 within 180 days after the date of the alleged civil rights
21 violation shall be deemed filed with the Department on the date
22 filed with the Equal Employment Opportunity Commission. Upon
23 receipt of a charge filed with the Equal Employment Opportunity

1 Commission, the Department shall notify the complainant that he
2 or she may proceed with the Department. The complainant must
3 notify the Department of his or her decision in writing within
4 35 days of receipt of the Department's notice to the
5 complainant and the Department shall close the case if the
6 complainant does not do so. If the complainant proceeds with
7 the Department, the Department shall take no action until the
8 Equal Employment Opportunity Commission makes a determination
9 on the charge. Upon receipt of the Equal Employment Opportunity
10 Commission's determination, the Department shall cause the
11 charge to be filed under oath or affirmation and to be in such
12 detail as provided for under subparagraph (2) of paragraph (A).
13 At the Department's discretion, the Department shall either
14 adopt the Equal Employment Opportunity Commission's
15 determination or process the charge pursuant to this Act.
16 Adoption of the Equal Employment Opportunity Commission's
17 determination shall be deemed a determination by the Department
18 for all purposes under this Act.

19 (B) Notice and Response to Charge. The Department shall,
20 within 10 days of the date on which the charge was filed, serve
21 a copy of the charge on the respondent. This period shall not
22 be construed to be jurisdictional. The charging party and the
23 respondent may each file a position statement and other
24 materials with the Department regarding the charge of alleged
25 discrimination within 30 ~~60~~ days of receipt of the notice of
26 the charge. The position statements and other materials filed

1 shall remain confidential unless otherwise agreed to by the
2 party providing the information and shall not be served on or
3 made available to the other party during pendency of a charge
4 with the Department. The Department shall require the
5 respondent to file a verified response to the allegations
6 contained in the charge within 30 ~~60~~ days of receipt of the
7 notice of the charge. The respondent shall serve a copy of its
8 response on the complainant or his representative. All
9 allegations contained in the charge not timely denied by the
10 respondent shall be deemed admitted, unless the respondent
11 states that it is without sufficient information to form a
12 belief with respect to such allegation. The Department may
13 issue a notice of default directed to any respondent who fails
14 to file a verified response to a charge within 30 ~~60~~ days of
15 receipt of the notice of the charge, unless the respondent can
16 demonstrate good cause as to why such notice should not issue.
17 The term "good cause" shall be defined by rule promulgated by
18 the Department. Within 30 days of receipt of the respondent's
19 response, the complainant may file a reply to said response and
20 shall serve a copy of said reply on the respondent or his
21 representative. A party shall have the right to supplement his
22 response or reply at any time that the investigation of the
23 charge is pending. The Department shall, within 10 days of the
24 date on which the charge was filed, and again no later than 335
25 days thereafter, serve a ~~send by certified or registered mail~~
26 written notice on ~~to~~ the complainant and on ~~to~~ the respondent

1 informing the complainant of the complainant's right to either
2 file a complaint with the Human Rights Commission or commence a
3 civil action in the appropriate circuit court under
4 subparagraph (2) of paragraph (G), including in such notice the
5 dates within which the complainant may exercise this right. In
6 the notice the Department shall notify the complainant that the
7 charge of civil rights violation will be dismissed with
8 prejudice and with no right to further proceed if a written
9 complaint is not timely filed with the Commission or with the
10 appropriate circuit court by the complainant pursuant to
11 subparagraph (2) of paragraph (G) or by the Department pursuant
12 to subparagraph (1) of paragraph (G).

13 (B-1) Mediation. The complainant and respondent may agree
14 to voluntarily submit the charge to mediation without waiving
15 any rights that are otherwise available to either party
16 pursuant to this Act and without incurring any obligation to
17 accept the result of the mediation process. Nothing occurring
18 in mediation shall be disclosed by the Department or admissible
19 in evidence in any subsequent proceeding unless the complainant
20 and the respondent agree in writing that such disclosure be
21 made.

22 (C) Investigation.

23 (1) After the respondent has been notified, the
24 Department shall conduct a full investigation of the
25 allegations set forth in the charge.

26 (2) The Director or his or her designated

1 representatives shall have authority to request any member
2 of the Commission to issue subpoenas to compel the
3 attendance of a witness or the production for examination
4 of any books, records or documents whatsoever.

5 (3) If any witness whose testimony is required for any
6 investigation resides outside the State, or through
7 illness or any other good cause as determined by the
8 Director is unable to be interviewed by the investigator or
9 appear at a fact finding conference, his or her testimony
10 or deposition may be taken, within or without the State, in
11 the same manner as is provided for in the taking of
12 depositions in civil cases in circuit courts.

13 (4) Upon reasonable notice to the complainant and the
14 respondent, the Department shall conduct a fact finding
15 conference, unless prior to 365 days after the date on
16 which the charge was filed, ~~unless~~ the Director has
17 determined whether there is substantial evidence that the
18 alleged civil rights violation has been committed, or the
19 charge has been dismissed for lack of jurisdiction, or the
20 parties voluntarily and in writing agree to waive the fact
21 finding conference. ~~If the parties agree in writing, the~~
22 ~~fact finding conference may be held at a time after the 365~~
23 ~~day limit~~. Any party's failure to attend the conference
24 without good cause shall result in dismissal or default.
25 The term "good cause" shall be defined by rule promulgated
26 by the Department. A notice of dismissal or default shall

1 be issued by the Director. The notice of default issued by
2 the Director shall notify the respondent that a request for
3 review may be filed in writing with the Commission within
4 30 days of receipt of notice of default. The notice of
5 dismissal issued by the Director shall give the complainant
6 notice of his or her right to seek review of the dismissal
7 before the Human Rights Commission or commence a civil
8 action in the appropriate circuit court. If the complainant
9 chooses to have the Human Rights Commission review the
10 dismissal order, he or she shall file a request for review
11 with the Commission within 90 days after receipt of the
12 Director's notice. If the complainant chooses to file a
13 request for review with the Commission, he or she may not
14 later commence a civil action in a circuit court. If the
15 complainant chooses to commence a civil action in a circuit
16 court, he or she must do so within 90 days after receipt of
17 the Director's notice.

18 (D) Report.

19 (1) Each charge shall be the subject of a report to the
20 Director. The report shall be a confidential document
21 subject to review by the Director, authorized Department
22 employees, the parties, and, where indicated by this Act,
23 members of the Commission or their designated hearing
24 officers.

25 (2) Upon review of the report, the Director shall
26 determine whether there is substantial evidence that the

1 alleged civil rights violation has been committed. The
2 determination of substantial evidence is limited to
3 determining the need for further consideration of the
4 charge pursuant to this Act and includes, but is not
5 limited to, findings of fact and conclusions, as well as
6 the reasons for the determinations on all material issues.
7 Substantial evidence is evidence which a reasonable mind
8 accepts as sufficient to support a particular conclusion
9 and which consists of more than a mere scintilla but may be
10 somewhat less than a preponderance.

11 (3) If the Director determines that there is no
12 substantial evidence, the charge shall be dismissed by
13 order of the Director and the Director shall give the
14 complainant notice of his or her right to seek review of
15 the dismissal order before the Commission or commence a
16 civil action in the appropriate circuit court. If the
17 complainant chooses to have the Human Rights Commission
18 review the dismissal order, he or she shall file a request
19 for review with the Commission within 90 days after receipt
20 of the Director's notice. If the complainant chooses to
21 file a request for review with the Commission, he or she
22 may not later commence a civil action in a circuit court.
23 If the complainant chooses to commence a civil action in a
24 circuit court, he or she must do so within 90 days after
25 receipt of the Director's notice.

26 (4) If the Director determines that there is

1 substantial evidence, he or she shall notify the
2 complainant and respondent of that determination. The
3 Director shall also notify the parties that the complainant
4 has the right to either commence a civil action in the
5 appropriate circuit court or request that the Department of
6 Human Rights file a complaint with the Human Rights
7 Commission on his or her behalf. Any such complaint shall
8 be filed within 90 days after receipt of the Director's
9 notice. If the complainant chooses to have the Department
10 file a complaint with the Human Rights Commission on his or
11 her behalf, the complainant must, within 30 days after
12 receipt of the Director's notice, request in writing that
13 the Department file the complaint. If the complainant
14 timely requests that the Department file the complaint, the
15 Department shall file the complaint on his or her behalf.
16 If the complainant fails to timely request that the
17 Department file the complaint, the complainant may file his
18 or her complaint with the Commission or commence a civil
19 action in the appropriate circuit court. If the complainant
20 files a complaint with the Human Rights Commission, the
21 complainant shall give notice to the Department of the
22 filing of the complaint with the Human Rights Commission.

23 (E) Conciliation.

24 (1) When there is a finding of substantial evidence,
25 the Department may designate a Department employee who is
26 an attorney licensed to practice in Illinois to endeavor to

1 eliminate the effect of the alleged civil rights violation
2 and to prevent its repetition by means of conference and
3 conciliation.

4 (2) When the Department determines that a formal
5 conciliation conference is necessary, the complainant and
6 respondent shall be notified of the time and place of the
7 conference by registered or certified mail at least 10 days
8 prior thereto and either or both parties shall appear at
9 the conference in person or by attorney.

10 (3) The place fixed for the conference shall be within
11 35 miles of the place where the civil rights violation is
12 alleged to have been committed.

13 (4) Nothing occurring at the conference shall be
14 disclosed by the Department unless the complainant and
15 respondent agree in writing that such disclosure be made.

16 (5) The Department's efforts to conciliate the matter
17 shall not stay or extend the time for filing the complaint
18 with the Commission or the circuit court.

19 (F) Complaint.

20 (1) When the complainant requests that the Department
21 file a complaint with the Commission on his or her behalf,
22 the Department shall prepare a written complaint, under
23 oath or affirmation, stating the nature of the civil rights
24 violation substantially as alleged in the charge
25 previously filed and the relief sought on behalf of the
26 aggrieved party. The Department shall file the complaint

1 with the Commission.

2 (2) If the complainant chooses to commence a civil
3 action in a circuit court, he or she must do so in the
4 circuit court in the county wherein the civil rights
5 violation was allegedly committed. The form of the
6 complaint in any such civil action shall be in accordance
7 with the Illinois Code of Civil Procedure.

8 (G) Time Limit.

9 (1) When a charge of a civil rights violation has been
10 properly filed, the Department, within 365 days thereof or
11 within any extension of that period agreed to in writing by
12 all parties, shall issue its report as required by
13 subparagraph (D). Any such report shall be duly served upon
14 both the complainant and the respondent.

15 (2) If the Department has not issued its report within
16 365 days after the charge is filed, or any such longer
17 period agreed to in writing by all the parties, the
18 complainant shall have 90 days to either file his or her
19 own complaint with the Human Rights Commission or commence
20 a civil action in the appropriate circuit court. If the
21 complainant files a complaint with the Commission, the form
22 of the complaint shall be in accordance with the provisions
23 of paragraph (F)(1). If the complainant commences a civil
24 action in a circuit court, the form of the complaint shall
25 be in accordance with the Illinois Code of Civil Procedure.
26 The aggrieved party shall notify the Department that a

1 complaint has been filed and shall serve a copy of the
2 complaint on the Department on the same date that the
3 complaint is filed with the Commission or in circuit court.
4 If the complainant files a complaint with the Commission,
5 he or she may not later commence a civil action in circuit
6 court.

7 (3) If an aggrieved party files a complaint with the
8 Human Rights Commission or commences a civil action in
9 circuit court pursuant to paragraph (2) of this subsection,
10 or if the time period for filing a complaint has expired,
11 the Department shall immediately cease its investigation
12 and dismiss the charge of civil rights violation. Any final
13 order entered by the Commission under this Section is
14 appealable in accordance with paragraph (B)(1) of Section
15 8-111. Failure to immediately cease an investigation and
16 dismiss the charge of civil rights violation as provided in
17 this paragraph (3) constitutes grounds for entry of an
18 order by the circuit court permanently enjoining the
19 investigation. The Department may also be liable for any
20 costs and other damages incurred by the respondent as a
21 result of the action of the Department.

22 (4) The Department shall stay any administrative
23 proceedings under this Section after the filing of a civil
24 action by or on behalf of the aggrieved party under any
25 federal or State law seeking relief with respect to the
26 alleged civil rights violation.

1 (H) This amendatory Act of 1995 applies to causes of action
2 filed on or after January 1, 1996.

3 (I) This amendatory Act of 1996 applies to causes of action
4 filed on or after January 1, 1996.

5 (J) The changes made to this Section by Public Act 95-243
6 apply to charges filed on or after the effective date of those
7 changes.

8 (K) The changes made to this Section by this amendatory Act
9 of the 96th General Assembly apply to charges filed on or after
10 the effective date of those changes.

11 (Source: P.A. 95-243, eff. 1-1-08; 96-876, eff. 2-2-10.)

12 (775 ILCS 5/7B-102) (from Ch. 68, par. 7B-102)

13 Sec. 7B-102. Procedures.

14 (A) Charge.

15 (1) Within one year after the date that a civil rights
16 violation allegedly has been committed or terminated, a
17 charge in writing under oath or affirmation may be filed
18 with the Department by an aggrieved party or issued by the
19 Department itself under the signature of the Director.

20 (2) The charge shall be in such detail as to
21 substantially apprise any party properly concerned as to
22 the time, place, and facts surrounding the alleged civil
23 rights violation.

24 (B) Notice and Response to Charge.

25 (1) The Department shall serve notice upon the

1 aggrieved party acknowledging such charge and advising the
2 aggrieved party of the time limits and choice of forums
3 provided under this Act. The Department shall, within 10
4 days of the date on which the charge was filed or the
5 identification of an additional respondent under paragraph
6 (2) of this subsection, serve on the respondent a copy of
7 the charge along with a notice identifying the alleged
8 civil rights violation and advising the respondent of the
9 procedural rights and obligations of respondents under
10 this Act and shall require the respondent to file a
11 verified response to the allegations contained in the
12 charge within 30 days. The respondent shall serve a copy of
13 its response on the complainant or his representative. All
14 allegations contained in the charge not timely denied by
15 the respondent shall be deemed admitted, unless the
16 respondent states that it is without sufficient
17 information to form a belief with respect to such
18 allegation. The Department may issue a notice of default
19 directed to any respondent who fails to file a verified
20 response to a charge within 30 days of the date on which
21 the charge was filed, unless the respondent can demonstrate
22 good cause as to why such notice should not issue. The term
23 "good cause" shall be defined by rule promulgated by the
24 Department. Within 10 days of the date he receives the
25 respondent's response, the complainant may file his reply
26 to said response. If he chooses to file a reply, the

1 complainant shall serve a copy of said reply on the
2 respondent or his representative. A party shall have the
3 right to supplement his response or reply at any time that
4 the investigation of the charge is pending.

5 (2) A person who is not named as a respondent in a
6 charge, but who is identified as a respondent in the course
7 of investigation, may be joined as an additional or
8 substitute respondent upon written notice, under
9 subsection (B), to such person, from the Department. Such
10 notice, in addition to meeting the requirements of
11 subsections (A) and (B), shall explain the basis for the
12 Department's belief that a person to whom the notice is
13 addressed is properly joined as a respondent.

14 (C) Investigation.

15 (1) The Department shall conduct a full investigation
16 of the allegations set forth in the charge and complete
17 such investigation within 100 days after the filing of the
18 charge, unless it is impracticable to do so. The
19 Department's failure to complete the investigation within
20 100 days after the proper filing of the charge does not
21 deprive the Department of jurisdiction over the charge.

22 (2) If the Department is unable to complete the
23 investigation within 100 days after the charge is filed,
24 the Department shall notify the complainant and respondent
25 in writing of the reasons for not doing so.

26 (3) The Director or his or her designated

1 representative shall have authority to request any member
2 of the Commission to issue subpoenas to compel the
3 attendance of a witness or the production for examination
4 of any books, records or documents whatsoever.

5 (4) If any witness whose testimony is required for any
6 investigation resides outside the State, or through
7 illness or any other good cause as determined by the
8 Director is unable to be interviewed by the investigator or
9 appear at a fact finding conference, his or her testimony
10 or deposition may be taken, within or without the State, in
11 the same manner as provided for in the taking of
12 depositions in civil cases in circuit courts.

13 (5) Upon reasonable notice to the complainant and the
14 respondent, the Department shall conduct a fact finding
15 conference, unless prior to 100 days from the date on which
16 the charge was filed, the Director has determined whether
17 there is substantial evidence that the alleged civil rights
18 violation has been committed or the parties voluntarily and
19 in writing agree to waive the fact finding conference. A
20 party's failure to attend the conference without good cause
21 may result in dismissal or default. A notice of dismissal
22 or default shall be issued by the Director and shall notify
23 the relevant party that a request for review may be filed
24 in writing with the Commission within 30 days of receipt of
25 notice of dismissal or default.

26 (D) Report.

1 (1) Each investigated charge shall be the subject of a
2 report to the Director. The report shall be a confidential
3 document subject to review by the Director, authorized
4 Department employees, the parties, and, where indicated by
5 this Act, members of the Commission or their designated
6 hearing officers.

7 The report shall contain:

8 (a) the names and dates of contacts with witnesses;

9 (b) a summary and the date of correspondence and
10 other contacts with the aggrieved party and the
11 respondent;

12 (c) a summary description of other pertinent
13 records;

14 (d) a summary of witness statements; and

15 (e) answers to questionnaires.

16 A final report under this paragraph may be amended if
17 additional evidence is later discovered.

18 (2) Upon review of the report and within 100 days of
19 the filing of the charge, unless it is impracticable to do
20 so, the Director shall determine whether there is
21 substantial evidence that the alleged civil rights
22 violation has been committed or is about to be committed.
23 If the Director is unable to make the determination within
24 100 days after the filing of the charge, the Director shall
25 notify the complainant and respondent in writing of the
26 reasons for not doing so. The Director's failure to make

1 the determination within 100 days after the proper filing
2 of the charge does not deprive the Department of
3 jurisdiction over the charge.

4 (a) If the Director determines that there is no
5 substantial evidence, the charge shall be dismissed
6 and the aggrieved party notified that he or she may
7 seek review of the dismissal order before the
8 Commission. The aggrieved party shall have 90 days from
9 receipt of notice to file a request for review by the
10 Commission. The Director shall make public disclosure
11 of each such dismissal.

12 (b) If the Director determines that there is
13 substantial evidence, he or she shall immediately
14 issue a complaint on behalf of the aggrieved party
15 pursuant to subsection (F).

16 (E) Conciliation.

17 (1) During the period beginning with the filing of
18 charge and ending with the filing of a complaint or a
19 dismissal by the Department, the Department shall, to the
20 extent feasible, engage in conciliation with respect to
21 such charge.

22 When the Department determines that a formal
23 conciliation conference is feasible, the aggrieved party
24 and respondent shall be notified of the time and place of
25 the conference by registered or certified mail at least 7
26 days prior thereto and either or both parties shall appear

1 at the conference in person or by attorney.

2 (2) The place fixed for the conference shall be within
3 35 miles of the place where the civil rights violation is
4 alleged to have been committed.

5 (3) Nothing occurring at the conference shall be made
6 public or used as evidence in a subsequent proceeding for
7 the purpose of proving a violation under this Act unless
8 the complainant and respondent agree in writing that such
9 disclosure be made.

10 (4) A conciliation agreement arising out of such
11 conciliation shall be an agreement between the respondent
12 and the complainant, and shall be subject to approval by
13 the Department and Commission.

14 (5) A conciliation agreement may provide for binding
15 arbitration of the dispute arising from the charge. Any
16 such arbitration that results from a conciliation
17 agreement may award appropriate relief, including monetary
18 relief.

19 (6) Each conciliation agreement shall be made public
20 unless the complainant and respondent otherwise agree and
21 the Department determines that disclosure is not required
22 to further the purpose of this Act.

23 (F) Complaint.

24 (1) When there is a failure to settle or adjust any
25 charge through a conciliation conference and the charge is
26 not dismissed, the Department shall prepare a written

1 complaint, under oath or affirmation, stating the nature of
2 the civil rights violation and the relief sought on behalf
3 of the aggrieved party. Such complaint shall be based on
4 the final investigation report and need not be limited to
5 the facts or grounds alleged in the charge filed under
6 subsection (A).

7 (2) The complaint shall be filed with the Commission.

8 (3) The Department may not issue a complaint under this
9 Section regarding an alleged civil rights violation after
10 the beginning of the trial of a civil action commenced by
11 the aggrieved party under any State or federal law, seeking
12 relief with respect to that alleged civil rights violation.

13 (G) Time Limit.

14 (1) When a charge of a civil rights violation has been
15 properly filed, the Department, within 100 days thereof,
16 unless it is impracticable to do so, shall either issue and
17 file a complaint in the manner and form set forth in this
18 Section or shall order that no complaint be issued. Any
19 such order shall be duly served upon both the aggrieved
20 party and the respondent. The Department's failure to
21 either issue and file a complaint or order that no
22 complaint be issued within 100 days after the proper filing
23 of the charge does not deprive the Department of
24 jurisdiction over the charge.

25 (2) The Director shall make available to the aggrieved
26 party and the respondent, at any time, upon request

1 following completion of the Department's investigation,
2 information derived from an investigation and any final
3 investigative report relating to that investigation.

4 (H) This amendatory Act of 1995 applies to causes of action
5 filed on or after January 1, 1996.

6 (I) The changes made to this Section by Public Act 95-243
7 apply to charges filed on or after the effective date of those
8 changes.

9 (J) The changes made to this Section by this amendatory Act
10 of the 96th General Assembly apply to charges filed on or after
11 the effective date of those changes.

12 (Source: P.A. 95-243, eff. 1-1-08; 96-876, eff. 2-2-10.)